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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
07/741,570	08/07/91	COATES	I REF/SN339

12M1/0900

RICHARD E. FICHTER
BACON AND THOMAS
625 SLATERS LANE-FOURTH FLOOR
ALEXANDRIA, VA 22314

ROUTED EXAMINER

ART UNIT PAPER NUMBER

1200

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DATE MAILED: 09/03/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

- ☒ This application has been examined ☒ Responsive to communication filed on 04/04/93 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-12, 22-38 AND 40-42 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-12, 22-38 AND 40-42 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).
12. ☒ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☒ been filed in parent application, serial no. 07/239,626; filed on 09/02/88
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit 1203

A more specific title is required.

The claims now in this case are 1-12, 22-38 and 40-42.

In view of the amendatory changes presented in the Amendment filed June 4, 1993 (Paper No. 9) and arguments presented therein, the formal rejection of record under 35 USC 112 (second par.) is hereby withdrawn.

Claims 1-12, 22-38 and 40-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 and 7-15 are of U.S. Patent No. 5,183,820. Although the conflicting claims are not identical, they are not patentably distinct from each other because there is substantial overlap. There is no statutory provision that sanctions an attempt at extension of monopoly beyond 17 years. See In re Ockert 114 USPQ 330.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

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REMARKS

There are no other issues the proper execution of a Terminal Disclaimer under 37 CFR 1.321(b) would overcome the rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Rotman whose telephone number is (703) 308-4698.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Rotman: ach
September 02, 1993

Alan L. Rotman
ALAN L. ROTMAN
PRIMARY EXAMINER
ART UNIT 1203